



INDIANA COURT OF APPEALS
ORAL ARGUMENT AT A GLANCE
INDIANA STATE UNIVERSITY

STATE OF INDIANA v. REX DAVID DELPH

Appeal from:

Madison Circuit Court
The Honorable Frederick
Spencer, Judge

Oral Argument:

Thursday, October 4, 2007
11:00—11:40 a.m.
20 minutes each side

CRIMINAL LAW

Did the trial court err when it dismissed the charges of murder, felony arson, and felony murder against the appellee?

CASE SYNOPSIS

Facts and Procedural History

On June 11, 2004, the State charged Rex David Delph with two counts of murder, Class A felony arson resulting in serious bodily injury, and two counts of felony murder. The charges arose from a fire at Delph's house that resulted in the deaths of his wife and nine-year-old son. On December 22, 2004, Delph moved for a continuance of the January 18, 2005, trial date, citing a need for more time to prepare his defense. The trial court granted the motion and reset trial for September 13, 2005.

On August 15, 2005, Delph moved for another continuance, noting that he had recently received new discovery from the State and citing a possible need to hire an expert to review evidence and a need for additional time to prepare for trial. At the time, both

parties were awaiting the results of a computer modeling simulation being prepared by the ATF. The trial court granted the motion and reset trial for February 7, 2006.

Eventually, after Delph moved for another continuance, trial was reset for September 12, 2006. On September 1, 2006, Delph moved for a continuance, and the trial court reset trial for November 14, 2006. On September 28, 2006, Delph moved for a discharge pursuant to criminal rule 4(C). On December 6, 2006, the trial court granted Delph's motion and dismissed all charges. In its order, the trial court charged 221 days to the State from the time of Delph's charges to the first trial setting, 147 days to the State when trial was reset from September 13, 2005, to February 7, 2006, due to what it concluded was the State's failure to timely provide discovery materials, and 61 days to the State when trial was reset from

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September 12, 2006, to November 14, 2006, due to what it concluded was another failure to timely provide discovery materials. The State now appeals.

Parties' Arguments

Indiana Criminal Rule 4(C) provides that the State must bring a defendant to trial within one year of being charged or arrested, with the exception that delays caused by a defendant's requests for continuances, by the act of the defendant, or by congestion of the court calendar do not count against the one-year period. The rule places an affirmative duty on the State to bring a defendant to trial within one year, but its purpose is to assure an early trial and not to provide defendants with a technical means of avoiding trial.

The State argues that the initial period of 221 days was incorrectly calculated and should, in fact, have been only 186 days. Second, the State argues that the 147-day delay should not have been charged to it because it was diligent in complying with Delph's discovery requests. Third, the State argues that the final 61-day period was incorrectly calculated and should not have been charged against the State in any event. Fourth, the State argues that due to the trial court's alleged miscalculations, 365 days had not yet elapsed even if the various delays are attributable to the State. Finally, the State argues that Delph has waived any challenge he might have to any trial date set outside the 365-day period by failing to object when that trial date was set.

Opinion in this case expected:

By end of calendar year 2007

Professor Maule will be informed when the Court has issued an opinion in this case. Check the Court's website to read the opinion.

For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>

Or contact:

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TODAY'S PANEL OF JUDGES

Hon. Patricia Riley (Jasper County), Presiding

- Judge of the Court of Appeals since January 1994

Patricia A. Riley, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994.

A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges.

Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

Today's oral argument is the 192nd case the Court of Appeals has heard "on the road" since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court, Judge Robb was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges. Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, is married to a professor at Purdue. Their son, a graduate of the United States Naval Academy, is on active duty in the U.S. Navy.

The 15 judges of the Indiana Court of Appeals issue more than 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.



TODAY'S PANEL OF JUDGES

Hon. Cale J. Bradford (Marion County)

- Judge of the Court of Appeals since August 2007



Cale J. Bradford was appointed to the Court of Appeals by Governor Mitch Daniels and took his seat on August 1, 2007.

Prior to his elevation to the Court of Appeals, Judge Bradford served for more than 10 years as Judge of the Marion Superior Court, seven years in the criminal division and three in the civil division. He was twice elected presiding judge by his colleagues.

During this tenure, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county's response to criminal justice problems, including jail overcrowding, staffing, and budget issues. His efforts led to the end of 30 years of federal oversight of the Marion County Jail and to security improvements at the county's Juvenile Detention Center.

Before joining the bench, Judge Bradford served in the Marion County Prosecutor's Office for two years, overseeing a staff of more than 100 attorneys. For five years, he was an Assistant United States Attorney for the Southern District of Indiana, prosecuting major felony drug trafficking cases. He engaged in the private practice of law from 1986 to 1991, and served as both a deputy prosecutor and public defender during his career.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D. from Indiana University-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases, and a former member of both the Indiana Judges Criminal Policy Committee and the Board of Directors of the Indiana State Judicial Conference. He is a Distinguished Fellow of the Indianapolis Bar Association and has taught ICLEF seminars on trial practice for more than 10 years. From 2005 to 2007, Judge Bradford hosted "Off the Bench with Judge Cale Bradford," a legal commentary program on Marion County's government access network. He also served on the Judicial Technology and Automation Committee (JTAC), helping to draft the state judiciary's policies on technology and electronic case management.

Judge Bradford is a former director of Indianapolis's John P. Craine House, a residential alternative to incarceration for women offenders with pre-school-aged children. He is a member of the Lawrence Youth Football League Advisory Board of Directors and the Lawrence Men's Soccer Booster Club. He and his wife, a full-day kindergarten teacher, have five children.

ATTORNEYS FOR THE PARTIES

For Appellant, State of Indiana:

Cynthia Ploughe
Deputy Attorney General
Indianapolis

Cynthia Ploughe is a native of Tipton County who originally had no intention of attending college. After graduating from Tipton High School, she moved to Washington, D.C. to work for the Federal Bureau of Investigation, which trained her to be a fingerprint examiner. Four years later, she returned to Indiana, and after encouragement from a family friend, she began her collegiate studies at Indiana University in Kokomo. She eventually transferred to Ball State University, earning a bachelor's degree in 1986 with a major in political science and a minor in journalism.

Following graduation, Ms. Ploughe entered Indiana University Law School in Indianapolis and began working at the Office of the Attorney General at the end of her first year. In 1990, after graduating from law school and passing the Indiana bar exam, she was sworn in as a Deputy Attorney General. She conducted research and responded to briefs submitted by defendants in cases such as murder, child molestation, and theft. She regularly presented cases in oral argument before the Indiana Supreme Court and the Indiana Court of Appeals.

In 1997, she left the Attorney General's office to become a deputy prosecutor in Marion County. She first prosecuted misdemeanor crimes — minor drug possession, operating a vehicle while intoxicated, prostitution, shoplifting — but soon began prosecuting felony offenses, including major drug cases, such as dealing cocaine and methamphetamine.

Ms. Ploughe returned to the Indiana Attorney General's office in 2001 and became Section Chief of Criminal Appeals in 2004. She supervises more than a dozen attorneys and acts as an appellate liaison for Indiana's 90 elected prosecutors and their deputies. Prosecutors who obtain a trial court ruling they don't like confer with Ms. Ploughe to determine whether the State will appeal. If a case is appealed, Ms. Ploughe compiles the case record and prepares the Brief of Appellant.



For Appellee, Rex David Delph:

Joseph Cleary
Hammerle Allen & Cleary
Indianapolis

Joseph Cleary graduated from the University of Notre Dame in 1985 and earned his law degree from Indiana University-Bloomington in 1988, the year he also passed the Indiana bar. After graduation, he went to work at the Office of the State Public Defender and soon began doing capital post-conviction work. During his tenure with the State Public Defender, Mr. Cleary was successful in gaining relief for several individuals on death row, including Gregory VanCleave, Phillip McCollum and William Spranger, who all eventually received sentences less than death.

In 1995 Mr. Cleary entered into private practice with Robert W. Hammerle. A good portion of his practice involves post-trial work, including appeals,

post-conviction, and federal habeas. Mr. Cleary received the Gideon Award from the Indiana Public Defender Council in 2001 for zealous advocacy of indigent criminal defendants. In large part that award stemmed from his representation of Jerry Watkins, who was convicted in 1986 for murder and sentenced to 60 years in prison. In 2000, federal district judge David F. Hamilton granted Mr. Watkins' writ of habeas corpus and found him to be innocent. Eventually, all charges were dismissed against him.

Mr. Cleary's wife Kathleen, also with the State Public Defender, is in her 19th year representing clients on death row seeking post-conviction relief. They have two children, Allison and Daniel.